

DMR ADVISORY COUNCIL MEETING
February 12, 2003, 1:00 p.m.
Minutes

1. Welcome

A meeting of the Department of Marine Resources (DMR) Advisory Council (AC) was held on this date at the DMR office building in Hallowell. Council members who attended the meeting included: Chair Blair Pyne, Lori Howell, Kristin Porter, Elizabeth Sheehan, Steve Train, Jenny Bichrest, Bill Sutter, Ralph Smith, Charlton Ames, David Pecci, and members Dana Rice and Allyson Jordan joined the meeting shortly after it started. Department staff included Commissioner Lapointe, Deputy Commissioner Estabrook, Col. Fessenden, Terry Stockwell, Linda Mercer, Deirdre Gilbert, and L. Churchill. Other attendees included Todd Park Merolla of Northport, Joseph J. Krulis of Northport, Amr A. Ismail of Mason Bay Resources LLC from Jonesport, Matthew Ayer of the University of New Hampshire, Mark Peterson – Great Eastern Mussel, Tom Trott of Suffolk University, Ron Huber of Penobscot Report (News) in Rockland, Joan Amory of Working Waterfront.

Chair Pyne provided a few opening remarks:

He reviewed the voting procedures brought up at the January meeting and the how voting should be conducted per the statute (12 MRSA §6024(4)). The actions in January are documented in the minutes of that meeting and were read. He indicated that abstentions were no longer routinely acceptable as they are equivalent under this statute to a “no” vote. Council members and Department staff who may become aware of any similar technicalities are requested to alert to the members and staff to such a situation at the beginning of a meeting, before any actions are taken. In light of these changes, out of fairness to the work by Terry Stockwell on two of the rulemaking actions taken during the January meeting the Chair suggested that the members discuss revisiting those issues while it is still legal to do so.¹

The Chair urged this council to draft a letter, or contact the Legislators directly regarding the rumor that dedicated funds be raided for the State’s budget shortfall by the Legislature.

Regarding research the Chair and council members Steve Train and Bill Sutter met with Commissioner Lapointe, Deputy Commissioner Estabrook, Lab Director Linda Mercer and Finance Director Bert Bilodeau to review funding issues and sources. The Commissioner explained that they discussed internal and external funding constraints. The current research that the Department conducts is done broadly and does not answer all the questions that we have. There are money and staff constraints too. He also pointed out that if we make a break the faith between (how) dedicated funds are used then it takes years to rebuild those sources.

The Chair acknowledged the dedication and expressed appreciation, along with the council members, for the many years of service by Deputy Commissioner Estabrook. This will be his last meeting. His retirement is effective Friday, February 14, 2003.

The council members then discussed voting protocols. Abstentions were discussed as to when they’ve been acceptable such as when a member feels that it pertains to personal gain or involvement such as for a special license exemption. The Commissioner suggested that they look at the merits of the particular situation when it arises. If it is a State funded grant then maybe its appropriate to abstain. If not state funded, then look at the record with Marine Patrol, are they likely to report, etc.

¹ See March 19, 2003 minutes for the February 12, 2003 minute’s discussion request by Bill Sutter.

The Chair then asked if the members wished to revisit two voting items from the January meeting. Steve Train indicated that if they revisit those rulemakings then those items should be posted on the next agenda to be voted on at that meeting.

Motion: (C. Ames, L. Howell) Approved, B. Sutter opposed. The council voted to accept the motion to place the Chapter 11.20(B) Kittery Area Season rulemaking on the March agenda as a voting item.

Motion: (J. Bichrest, S. Train) Approved, Unanimous. The council voted to accept the motion to place the Chapter 25.94(2)(e) & (f) Lobster Management Zones, Zone E and F rulemaking on the March agenda as a voting item.

2. Approval of minutes (January 15, 2003)

Motion: (L. Howell, S. Train) Unanimous. The council voted to accept the minutes of the meeting held January 15, 2003 with a correction on page 3, section 4 Reports, starting a new paragraph of the Discussion Items to indicate that those comments were not stated by Dep. Comm. Flagg; and correct line 18 on page 4 of J. Bichrest's statement from "are" to "as".

3. Regulations - Action

Chapter 2.10(3)(3) Environmental Characterization and Baseline and Chapter 2.27 Department Site Review, Documented Information (major substantive rulemaking); and Chapter 2 sections 2.10 Application Requirements, 2.15 Notice of Lease Application and Hearing, 2.37 Decision, 2.40 Lease Issuance, 2.64 Experimental Aquaculture Lease and 2.75 Minimum Lease Maintenance Standards (routine technical rulemaking)

L. Churchill filled in for Andrew Fisk to provide a brief synopsis of the two rulemaking items and changes made since the proposed rulemaking.

Major substantive: we removed a paragraph that created a redundancy in requiring certain information. Otherwise there were not changes made to what was proposed.

Routine technical:

Best available technology requirement – we have added clarifying language that better defines what we mean, and to what the term it applies.

Site separation for finfish farms – while the waiver from the 2,000 distance is still proposed for removal, we have clarified that it does not apply to the renewal, transfer, or the issuance of a new lease proposed in essentially the same area as an existing lease.

Performance bonds – we have made the \$25,000 for discharge leases applicable up to 5 individual leases, instead of \$25,000 for each. This gives us 5x the bond as before to apply toward an event, and a reduction in carrying costs for the bonds.

Presently \$5,000 in bonds costs \$100 / yr. \$25,000 will cost \$250. So old system was 5 \$5,000 bonds at \$500 total. Now it is 250 to carry one bond of \$25,000 for five sites. We have also added language that allows us to prorate upward a bond for a mussel raft operation that had more than 2,000 square feet of gear on the lease.

Questions were asked about the cost of taking underwater videos. Answer: These are far more commonly available today and less expensive than 10 years ago when this type of requirement was first initiated under the monitoring statutory requirement in 1992. Comm. Lapointe to B. Sutter:

Regarding pending legislation these rules are considered the best way to proceed at this time. L. Howell expressed concern about the scoping session and press release indicating thinking that the press release followed the scoping session. The point behind the scoping sessions is for the Department to be more readily available earlier on in the application process to the general public and gather useful information that may assist in the Department's site review work. The press

release would precede the scoping session, not after. Ralph Smith asked if this included rulemaking on buffer zones for shellfish, answer: it did not, only finfish. L. Howell noted that the industry is working on a set of best management practices that should be implemented not too far down the road.

Motion: (S. Train, E. Sheehan) *Approved, Unanimous. The council voted to approve the provisional regulations put forth for Chapter 2.10(3)(3) Environmental Characterization and Baseline and Chapter 2.27 Department Site Review, Documented Information (major substantive rulemaking).*

Motion: (S. Train, K. Porter) *Approved, Unanimous. The council voted to approve the regulations put forth for Chapter 2.10 Application Requirements, Chapter 2.15 Notice of Lease Application and Hearing, Chapter 2.37 Decision, Chapter 2.40 Lease Issuance, Chapter 2.64 Experimental Aquaculture Lease and Chapter 2.75 Minimum Lease Maintenance Standards (routine technical rulemaking).*

4. Reports:

Annual Research Report:

Lab Director Linda Mercer thanked council members for their comments and indicated that a meeting held last week on the research report mentioned previously by the Chair was also useful. She stated that monitoring and aquaculture activities by Department staff also are considered a form of research. She acknowledged that there could be confusion on the contents of this report as the agency is asked for both a research plan and a report. She intends to separate these next year. In this report she will place the research plan after the executive summary. Later this year during the fall she would like to meet with the council members to present plans for 2004 in a more useful manner. This would also increase the time to prepare the report and avoid a rush in January.

Discussion points: How useful are the economic benchmarks? Answer: Agencies were required to develop a strategic plan in 1998 that included measurable objectives. This was supposed to be tied to the state's budget. Dep. Comm. Estabrook explained that this was developed through a "group think" with the objectives being so lofty as to be unattainable. C. Ames: The lofty goals don't help but the individual goals would be good.

Updates on NEFMC and ASMFC updates:

Dep. Comm. Flagg is attending a joint US Canada herring meeting today. Comm. Lapointe filled in for him. ASMFC highlights: Groundfish Amendment 13 organizational issues are to be revisited; a draft may be out by mid summer; the target deadline is next May although we've asked for August, which was not accepted by the judge.

Dana Rice: The next (NEFMC) herring (oversight committee) meeting is March 26th. [Later from Lew: Herring Advisor's meet March 19 in Portland.]

Comm. Lapointe: Regarding the Area-1A 6,000 MT early herring quota, last year we ran out mid April, which disrupted markets. The industry took 2 days then 3 days out, etc. Lew says to stay tuned. The overall resource is of concern; from the Canadian border to the Mid-Atlantic NMFS estimates a stock assessment of 5 billion (~2.9 million MT). However, the Canadian's use a different stock assessment method that estimates 25% of the NMFS estimate. [Later from Lew: US spawning stock estimate is 1.8 million MT for the Gulf of Maine; Canada's spawning stock estimate is 0.8 million MT for the Gulf of Maine.] It may be tough for the next few years. Also, discussions still include impacts of mid water trawling therefore you will get the overall stock versus gear discussions.

Comm. Lapointe: Amendment 10 to the scallop plan contains options to severely restrict the general category scallop vessels. Maine and Rhode Island offered options to allow the fishery to remain on a status quo basis, i.e., keep the 400 lb/day to ensure that it remains a viable option.

Col. Fessenden: Enforcement has been asked to visit places of business to check into by-catch in the herring catch.

Bill Sutter: Where do the herring stocks mix, mid-Atlantic? Dana Rice: It depends on whom you ask. Comm. Lapointe: There are many ideas on this; it likely varies by degree, the mixing of different stocks.

Dana Rice: There is no definitive science, which would take at least 10 years to develop. There is a void in the data on where abundance is going to be. This needs to be addressed and decide how to be divided it up. The problem is that we do not have 10 years to wait for the science. Jenny Bichrest: How would the 60,000 MT (allocation) be divided up? [Herring in Area 1A has a 6,000 allocation from Jan. 1 - May 31st and 54,000 MT allocation from June 1 – Dec. 31st .] Col.

Fessenden: Lew mentioned this (was being discussed). J. Bichrest: If you wait until the end of April, it is no good for anyone. I'm concerned with another plant now on-line that could use up our (quota) in a 2 week period. Could we have this looked at sooner? Col. Fessenden: My impression (from Lew) is that they will look at this at the end of March. There may be an indication that (lack of days out) may be intended to use bait up in order to drive the prices up. Bill Sutter: The herring industry should be concerned about huge cut back in the European herring (stocks) as their aquaculture industry will put pressure on (American) stocks for feed. Dana Rice: Was there any consensus (in NH) about 2 days out? Col. Fessenden: Lew said that (even) Peter Mullen of Massachusetts supported 2 days out. J. Bichrest: Most (industry persons) didn't go (to the meeting). (They) thought they'd take 2 days out from the beginning but it didn't go that way.

Comm. Lapointe: Dogfish: This stock has low fecundity and the female abundance is decreasing. The Canadian's have not cut back so the Massachusetts industry is buying from Canada to replace what they can no longer take. The net impact is no change (to the stock) with the American's taking cutbacks and the Canadian industry benefiting by increased sales. This is a slow process.

Comm. Lapointe: Striped bass – requested to turn down Amendment 6. Maine voted against increasing the commercial quota but lost; although the gains are better than the losses. A commercial take would be based on historic catch, which for Maine is documented at 250 pounds (per year).

Comm. Lapointe: Lobster – The conservation equivalency will come up again. The technical committee will be dealing with the decline and abundance in Area 2. Cape Cod to Long Island has experienced a population crash. It may be caused by water temperature; they have lots of shell disease. They used to have a 5-6 million-lb/yr industry. They want to reduce catch to 900,000 lb next year. Stay tuned. If there is to be a management change for lobster the emergency needs to be proportional to the emergency event.

Dave Pecci: FYI that most of the emails about striped bass to the Commissioner are not coming from CCA. CCA wants the status quo for mortality. There is a debate about 43% going to the commercial sector when most of the impact (to reduce mortality) has been helped 75% by the recreational sector. Comm. Lapointe: On a different spin, the commercial sector has been held to a constant quota for some time and the recreational harvest has grown. We should be cautious about this debate as we could wind up with (greater overall) restrictions of the fishery.

Terry Stockwell: The agency has begun formal negotiations with Canada regarding the "gray area" off Cutler formerly referred to as the "Waters Surrounding Seal Island and North Rock". The next

meeting will be in March. A resolution is targeted for the end of June. The (current) buzzword is “equality”.

Terry Stockwell: Regarding whales, there have been 8 entanglements, 5 mortalities and 2 of which are attributed to the inshore lobster fishery. The potential biological removal (PBR) is zero therefore NMFS is amending its plan to propose changes to the large whale take reduction Plan. The next meeting on this is in April. The bad news is they are looking at floating ground lines. The Department is now currently funding work with underwater remotely operated vehicles (ROV's), starting next week, to look at and record ground lines. There will be a presentation on this work at the upcoming Fisherman's Forum. Comm. Lapointe: During discussions in Stonington there is quite a bit of difference between types of ground lines, one that last 5-7 days and others that last 3-4 years. T. Stockwell: the propose headland and bay modifications were not accepted (in the plan). Congress is funding this. Then Terry discussed breakaway lines versus toggles. K. Porter: Singles are illegal in federal waters.

Legislation: See handout of bill titles. Dep. Comm. Estabrook stated that there are 1,800 bills this session and we've only seen the titles of 600 so far. Deirdre Gilbert: There has been one work session so far and that was on the bill for combining IF&W, Agriculture and DMR. Rep. Goodwin agreed to bring it back next January. K. Porter asked about the bill to increase the ring size. D. Gilbert: The drafted title says ring size however; the intent was apparently to be a 4-inch shell size.

5. Special Licenses

Mathew Ayer, University of New Hampshire, smelt research – see handout:

The graduate student described his research that pertains to studying growth rate for the culture of Rainbow smelt for bait production. Chair Pyne asked if he recognized the potential conflict with the elver/eel industry at this time of year. M. Ayer: Yes, it could. Members discussed the use of dip nets versus fyke nets and the efficacy of catching the limited number of 200 total smelts, particularly due to the restrictions in the elver fishery to not place nets or traps in the middle one-third of a water way, etc. Concern was expressed that the fyke net(s) set overnight could catch (maybe) 1,000 fish and those fish above 200, or the release of 800 could easily die shortly after release from being captured all night in a net that is not attended. M. Ayer indicated that dip nets could be used. It was his understanding that for some land locked areas it was simply not an effective method of harvest, i.e., the water is too deep. He explained that 6 sites were requested simply because he was unsure where he would be able to catch the smelt. Once the 200 fish were caught he would not continue to fish. He explained that this is a 2 year (funded) project and uncertain after that. There will be a period of time needed for grow out (beyond the 2 years). Chair Pyne: In the Medomak you may need to be armed; it is strongly suggested that you contact (local) persons in the eel industry before going to these places and using a dip net would be much better (more acceptable). Under the elver rules one cannot place nets in the middle of the stream any more. Report needs to be required.

Motion: (L. Howell, S. Train) Approved, Unanimous. The council voted to approve the special license exempting Mathew Ayer from Chapter 40.12 on the method of take and the amount of smelts, to capture Rainbow smelt using dip nets or a continuously attended fyke net; up to the amount of 200 fish; notify Marine Patrol before and after his activities; provide report(s); and is allowed one renewal.

Thomas Trott, PhD, Suffolk University, Boston and its Robert S. Friedman Lab, Edmonds, Maine, benthic research, Cobscook Bay area – see handout

The professor described his request and that it would focus on succession or the change in the intertidal zone community particularly in the comparison to similar work done by the State Planning Office in the 1970's. As many renewals possible are requested. He is also interested in exotics

that may turn up. All specimens would be preserved. This is considered basic research looking at examples such as temperature changes, species composition and new species; and what drives the succession of organisms.

Motion: (K/ Porter, S. Train) *Approved, Unanimous. The council voted to approve the special license exempting Thomas Trott from those portions of the Marine Resources laws and regulations pertaining to the taking, possession, out-of-season dates and sub-legal sizes of marine organisms and from those portions of 12 M.R.S.A. §6431 relating to the taking and possession of undersized lobsters for the purpose of the standard basis research benthic type sampling methodology; standard Marine Patrol notifications; provide reports annually; and is allowed four renewals.*

6. Other Business

Comm. Lapointe reviewed the budget related personnel cuts, see handout. In short: the positions are 4 Marine Patrol Officers, 3 area biologists, 3 shellfish personnel, the pathologist and one custodian. It is also proposed to change 2 general funded lobster positions to the lobster fund; and 2 general funded urchin positions to the urchin fund. This is only the first manifestation of tough times. Since many cut backs have already taken place over the last few years this time we had to target programs. There will be an appropriations hearing on Monday, February 24th with April as the target to have the budget settled. Talk with the Joint Standing Committee; members of the Appropriations committee, or your local legislator about what benefits you receive by DMR's work. It helps to have stakeholders input. Bill Sutter asked questions about the dedicated funds targeted for 2 urchin positions. Comm. Lapointe: Explained that this is a stopgap measure (not intended for long term use.) J. Bichrest asked about increasing license fees for services. Comm. Lapointe: Increasing fees must be done through the Legislature. In a broad based discussion with the transition team back in December increased fees was discussed. L. Howell: Caution must be taken to not increase fees whereby it results in an industry being non-competitive with other states or Canada that have lower fees. K. Porter: The clam industry may want to add a surcharge now that areas may be closed for longer periods due to personnel cutbacks. S. Train: The lobster industry could not get the Legislature to approve a \$25 increase on the lobster license (last year). We (may have) alienated (them) in the long run. Also, even if we have that dedicated fund now it would be targeted for fixing the budget shortfall. D. Rice: People in the industry and in the Legislature do not realize the importance of the marine resources to the economy of Maine. Look at the example of the closing of the mill in Millinocket and the tiz that has created. But on the marine side marine problems are considered incidental. Persons do not realize how much we contribute to the general economy. Comm. Lapointe: Based on the work that Sue Inches has done in the Department on Groundfish we intend to expand that to broader coverage of the marine resource economics.

Motion: (L. Howell, K. Porter) *Unanimous to adjourn.*

The meeting was then followed by a presentation to the DMR Advisory Council and Lobster Advisory Council from 3:00 – 5:00 pm by the Conservation Law Foundation (CLF). Presenters from CLF were:

Massachusetts Office:

Priscilla M. Brooks, Ph.D. - Staff Economist & Director of the Marine Resources Project
Sarah Clark Stuart, Marine Policy Consultant
(617) 350-0990

Maine Office:

Peter Shelley, Vice President of CLF & Director of CLF's Maine Advocacy Center
(207) 594-8107

Reminder: The next meeting will be held Wednesday, March 19, 2003.